IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6313 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

GOTAJI ANDERSINH DABHI

Appearance:

MR HARDIK C RAWAL for Petitioner

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 08/08/2000

ORAL JUDGEMENT

Heard Mr. H.C. Rawal, learned counsel appearing on behalf of the petitioner GSRTC, and Mr. B.A. Vaishnav, learned counsel appearing on behalf of the respondent.

2. The respondent Gotaji Andersinh Dabhi has been working as a conductor. While on duty on Dahegam-Sadra route, a surprise check was conducted by the Corporation official, and during the check it was found that the respondent realised bus fare from the passengers but he has not issued tickets to them. The matter was reported to the authority, and the departmental proceedings have been initiated against the respondent. During the inquiry the charges were proved against the respondent for misappropriation of public money. The disciplinary authority after considering the inquiry report and after hearing the respondent, dismissed the respondent from service by an order dated 12-9-1994. The departmental appeal filed by respondent has also been rejected by the authority. The respondent thereafter took up the matter with the Special Labour Court, Ahmedabad and the reference has been registered by the Labour Court as (LCITAT) No. 748 of 1997. Special Labour Court after taking evidence of the parties, and after hearing them set aside the order of dismissal, and directed the petitioner Corporation to reinstate the respondent in service with 60 % back wages. Having felt aggrieved by the order, Corporation has filed present petition for quashing the order of the Special Labour Court, Ahmedabad dated 1-11-1999.

3. Mr. Rawal, learned counsel for the GSRTC submitted that the respondent was earlier also dismissed from service for his misconducts. It is further submitted by Mr. Rawal that, the respondent has committed various misconducts during his service career and for that he was repeatedly cautioned and warned. But in spite of that, the respondent did not correct his misconducts and he indulged in misappropriation of public money. Mr. Rawal accordingly submitted that the Special Labour Court has taken a very lenient view in the matter of penalty and submitted that, having regard to the nature of offence committed by the respondent, and considering his past conducts, Special Labour Court should not have disturbed the penalty imposed by the disciplinary authority. Mr. Rawal further submitted that the order of the Special Labour Court is without jurisdiction, especially when the Labour Court found no illegality in the departmental proceedings. Learned counsel accordingly submitted that the judgment & award of the Special Labour Court be quashed.

4. Mr. B.A. Vaishnav, learned counsel for the respondent submitted that, it is true, earlier also the respondent was dismissed from service, but other

misconduct of the respondent has not been proved by the Corporation before the Special Labour Court, and therefore, the Labour Court has taken a correct view having regard to the present misconduct of the petitioner. Mr. Vaishnav further submitted that the Special Labour Court after considering both oral and documentary evidence came to the conclusion that the punishment imposed on the respondent is disproportionate to the offence committed, and therefore the Special Labour Court has quashed the order of dismissal and this finding of fact should not be interfered by this Court in a writ jurisdiction.

5. I have considered submission of learned counsel of both the parties. It is not in dispute that in earlier occasion also, the respondent was dismissed from service for misappropriation of public money. It is on record of the Labour Court that the respondent was earlier cautioned and warned for many times for his various misconducts. Having regard to the facts & circumstances of the case, I am of the view that the Special Labour Court has taken a too lenient view in the matter of penalty. Further, there is nothing in evidence to show that during the period from termination till the date of judgment by the Special Labour Court, respondent did not earn any money. Since the Corporation did not receive any service from the respondent, I am of the view, payment of 60% of the back wages to the respondent is unreasonable. After considering submission of learned counsel of both the parties, and after going through the record and documents placed in the case record, I am of the view that the respondent deserves a more stringent penalty than what has been awarded by the Special Labour Court. I am, therefore, of the opinion that, withholding of two yearly increments with cumulative effect and payment of 30 % back wages will meet the ends of justice. Accordingly, the judgment & award of the Labour Court dated 1-11-1999 passed by Special Labour Court, Ahmedabad, in Reference (LCITAT) No. 748 of 1997, is modified to the extent that, two yearly increment of the respondent shall be withheld with cumulative effect, and he be paid 30 % of the back wages. I do not like to interfere with the order of reinstatement passed by the Labour Court. It is submitted by Mr. B.A. Vaishnav that, inspite of reinstatement order of the Special Labour Court, the respondent has not yet been reinstated by the Corporation. The petitioner Corporation is directed to reinstate the respondent as early as possible, and preferably within four weeks from the date of receipt of present order.

6. With the aforesaid observations and directions,

present petition is allowed in part. Rule is made absolute to the aforesaid extent. However, I make no order as to costs.

Dt: 8-8-2000.

(P.K. Sarkar, J)

/vgn.